(17,398.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 288.

THE PEOPLE OF THE STATE OF NEW YORK *EX REL.* THE NEW YORK CLEARING HOUSE BUILDING COMPANY, PLAINTIFF IN ERROR,

vs.

EDWARD P. BARKER, THEODORE SUTRO, AND JAMES L. WELLS, COMMISSIONERS OF TAXES AND ASSESSMENTS OF THE CITY AND COUNTY OF NEW YORK.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 27, 1899.

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a Court of Appeals of New York, on Appeal from the Appellate Division for the First Department.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Clearing House Building Company, Appellant,
against
EDWARD P. BARKER, THEODORE SUTRO, and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York, Respondents.

(Taxes of 1896.)

Papers on Appeal.

Bristow, Opdyke & Willcox, attorneys for relator and appellant, 20 Nassau street, New York.
John Whalen, attorney for respondents, 2 Tryon row, New York.

b STATE OF NEW YORK:

Court of Appeals, Clerk's Office.

To the judges of the United States Supreme Court:

The return of the judges of the court of appeals of the State of New York in pursuance to the writ of error in the case of The People of the State of New York on the relation of The New York Clearing House Building Company, appellant, *vs.* Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, respondents, taxes of 1896, is contained in the papers and proceedings hereto attached.

In witness whereof I have hereunto set my hand and affixed my official seal, at the city of Albany, this 29th day of April, A. D. 1899.

[Seal State of New York Court of Appeals.]

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

c Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 14th day of March, in the year of our Lord one thousand eight hundred and ninety-nine, before the judges of said court.

Witness the Hon. Alton B. Parker, chief judge, presiding.

W. H. SHANKLAND, *Clerk.*

Remittitur March 14th, 1899.

d THE PEOPLE, &c., *ex Rel.* THE NEW YORK Clearing House Building Company, Appellant,
ag'st
EDWARD P. BARKER & Others, Commissioners of Taxes, &c., Respondents.
} Taxes of 1896.

Be it remembered, that on the 21st day of July, in the year of our Lord one thousand eight hundred and ninety-eight, The New York Clearing House Building Company, the appellant in this proceeding, came here into the court of appeals, by Bristow, Opdyke & Willcox, Esqrs., its attorneys, and filed in the said court a notice of appeal and return thereto from the judgment & order of the appellate division of the supreme court in and for the first judicial department. And Edward P. Barker & others, commissioners of taxes, &c., the respondent- in said proceeding, afterwards appeared in said court of appeals by John Whalen, Esq., corporation counsel; which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

e Whereupon, the said court of appeals having heard this cause argued by Mr. David Willcox, of counsel for the appellant, and by Mr. James M. Ward, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the judgment and order of the supreme court appealed from in this proceeding, be in all things affirmed. And it was further ordered and adjudged that the respondents recover against the appellant costs of appeal to this court.

And it was also further ordered, that the record aforesaid, and the proceedings in this court, be remitted to the said supreme court, there to be proceeded upon according to law.

f Wherefore, it is considered that the said judgment & order be in all things affirmed with costs as aforesaid, and stand in full force, strength and effect.

And hereupon, as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *March 14th*, 1899.

Seal State of New York Court of Appeals.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said proceeding in the court of appeals, with the papers originally filed therein attached thereto.

W. H. SHANKLAND, *Clerk.*

1 N. Y. Supreme Court, Appellate Division, First Department.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Clearing House Building Company
against
EDWARD P. BARKER, THEODORE SUTRO, and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York.
} Taxes of 1896.

Statement under Rule 41.

The writ in this proceeding was issued on July 16th, 1896, pursuant to an order of the same date made by Hon. Abraham R. Lawrence, J., allowing the same, and was served on the commissioners of taxes and assessments on the following dates: On James L. Wells, July 18th, 1896; on Edward P. Barker, July 20th, 1896; on Theodore Sutro, July 23d, 1896; and was filed in the office of the clerk of the city and county of New York on July 24th, 1896. The return of the said commissioners thereto was filed on November 5th, 1896, and was served on the attorneys for the relator on November 6th, 1896.

The names of the original parties in full were as above stated, and no change of parties has taken place pending this proceeding.

2 *Order for Writ.*

At a special term, part II, of the supreme court of the State of New York held at the court-house in the city and county of New York on the sixteenth day of July, 1896.

Present: Hon. Abraham R. Lawrence, J.

In the Matter of the Application of THE NEW YORK CLEARING HOUSE BUILDING COMPANY for a Writ of Certiorari to the Commissioner of Taxes and Assessments of the City and County of New York.

On reading and filing the petition of the above-named applicant, The New York Clearing House Building Company, verified July 15, 1896, and on motion of Bristow, Opdyke & Willcox, attorneys for said applicant, it is,

Ordered that a writ of *certiorari* be allowed and issued as prayed for in said petition, directed to Edward P. Barker, Theodore Sutro and James L. Wells, the commissioners of taxes and assessments of the city and county of New York; that a return thereto must be made and served upon the relator's attorneys within the time below specified; that said writ be returnable at a special term, part II, of this court to be held on the first Monday of September, 1896, at the county court-house in the city of New York, at the opening of court on that day, or as soon thereafter as a hearing can be had, and that said writ be allowed and signed and sealed by the clerk of this court.

Enter. ABRAHAM R. LAWRENCE, *J. S. C.*

3 Supreme Court, New York County.

To the supreme court of the State of New York:

The petition of the New York Clearing House Building Company, claiming to be aggrieved by the assessment hereinafter specified, respectfully shows to this court as follows:

I. The petitioner was duly incorporated upon January 18, 1894, pursuant to the business corporation law of the State of New York, and ever since that time, by virtue thereof, has been engaged at the city of New York in performing the functions specified in its certificate of incorporation, namely: "The purchase of land and the erection, fitting and furnishing and the maintenance of buildings thereon on which there shall be accommodations secured for the use of the New York Clearing House Association." The petitioner is engaged in no other business whatsoever.

II. Upon the second Monday of January, 1896, the total of the shares of the capital stock of the petitioner was $900,000.

Its gross assets then were not more than	$730,049 02
Ten per cent. of petitioner's capital was	90,000 00
Its remaining assets were.....	$640,049 02
This included amount invested in real estate in New York county, being both the assessed and actual value thereof.....	600,000 00
Balance	$40,049 02
The actual indebtedness of the petitioner then was ..	329,050 28

Therefore, on the second Monday of January, 1896, the total gross assets of the petitioner exclusive of its real estate did not exceed $40,049.02; on said second Monday of January, 1896, the indebtedness justly due and owing by the petitioner amounted to
4 $329,050.28. The petitioner, therefore, upon the said second Monday of January, 1896, had no personal property or capital stock whatsoever, which was subject to assessment or taxation in the city and county of New York.

III. The petitioner is informed and believes that one of the deputy tax commissioners in the city of New York, under the direction of the commissioners of taxes and assessments for that city and county, who then were and still are Edward P. Barker, Theodore Sutro and James L. Wells, between the first Monday of September, 1895, and the second Monday of January, 1896, assessed the petitioner upon the value of the personal property or capital stock of the petitioner, subject to assessment and taxation within that city and county in the sum of $165,999, and set down and included the same as the valuation for the purposes of assessment and taxation of the personal property or capital stock of the petitioner in the assessment lists or rolls or "annual record of the assessed valuation of real and personal estate," for the year 1896, kept in the office of said commissioners.

IV. Thereafter, and during the time that said assessment lists or

rolls or annual record were open to public inspection and to correction by said commissioners, they notified the petitioner thereof and requested it to furnish a statement of its condition for purposes of assessment on said second Monday of January, 1896. The petitioner, considering itself aggrieved by such assessment and valuation, in due time attended before said commissioners of taxes and assessments and duly made application to said commissioners to have such assessment and valuation corrected and altogether canceled, and made and delivered to said commissioners, in due form of law, a statement in writing under oath, truly and correctly showing its condition for the purposes of assessment on said second Mon-

day of January, 1896, setting forth the matters and things,

5 hereinbefore stated, a correct copy of which statement is hereto attached and marked "Exhibit A," and at the same time the petitioner delivered to said commissioners an affidavit containing further statements as to the facts a correct copy of which is hereto attached and marked "Exhibit B." Thereupon, and on or about April 2, 1896, the said commissioners found, fixed and determined the taxable value of the capital of your petitioner at $65,999, and notified your petitioner accordingly. A correct copy of said notice is hereto attached and marked "Exhibit C." Thereafter, and under date of April 13, 1896, your petitioner, still deeming itself aggrieved in the premises, addressed to said commissioners a further application for correction of the said assessment. A correct copy of said application is hereto attached and marked "Exhibit D." Thereupon, and on April 17, 1896, said commissioners raised the assessment of your petitioner to the sum of $165,999, and fixed the same at that sum, and under that date gave your petitioner notice to that effect. A correct copy of said notice is hereto annexed marked "Exhibit E." The said commissioners, therefore, refused to cancel said assessment, but notwithstanding petitioner's objection thereto raised the same and fixed it, as above stated, at the sum of $165,999, and have included and entered an assessment at that sum against the petitioner upon its personal estate or capital stock for the year 1896 in the assessment-rolls prepared by said commissioners and delivered by them to the board of aldermen of the city and county of New York as hereinafter set forth. The petitioner is not advised in what manner the said commissioners arrived at this amount. There is no lawful method of dealing with the facts which would lead to this result.

V. As the petitioner is informed and believes, no evidence or information whatever other than the aforesaid statements of

6 the petitioner was presented or known to or considered by said commissioners of taxes and assessments in making their determination. Said evidence was and is entirely uncontradicted; was accepted as sufficient by said commissioners, and no notice was ever given by the said commissioners to the petitioner that further or other evidence or information was required or desired by them, although the petitioner was ready and willing at all times to submit to the fullest examination by said commissioners concerning

the same. The said statements were absolutely accurate, correct and true in every respect.

VI. Upon July 6, 1896, the assessment-rolls of real and personal estate in the city and county of New York for the year 1896, containing the assessment aforesaid against the petitioner at the sum of $165,999, were completed, transmitted and delivered by said commissioners of taxes and assessments to the board of aldermen of the city of New York and received and filed by said board, and thereafter upon said day said commissioners gave public notice, as required by law, setting forth that the assessment-rolls of real and personal estate in said city for the year 1896 had been finally completed and had been delivered to the board of aldermen of said city and that such assessment-rolls would remain open to public inspection in the office of the clerk of said board of aldermen for a period of fifteen days from the date of said notice.

VII. The petitioner respectfully shows and specifies that the assessment aforesaid upon the personal property or capital stock of the petitioner and the decision or action of said commissioners of taxes and assessments of the city and county of New York, in imposing the same, were and are illegal and are erroneous by reason of overvaluation, and gives and specifies the particulars and grounds of said illegality, and the extent of such overvaluation, as the same are set forth in this petition and the exhibits attached thereto.

7 The total gross assets of the petitioner on said second Monday of January, 1896, were $730,049.02 and no more. From this sum, according to law, the said commissioners, after making an assessment upon petitioner's capital stock or personal property, should have deducted the following sum, which is not lawfully assessable in the city and county of New York as part of its personal property or capital stock, namely: Assessed value of real estate in New York county, $600,000. The balance of the petitioner's assets remaining after such deduction amounted to $130,049.02 and no more, but the indebtedness of the petitioner upon the said second Monday of January, 1896, amounted to $329,050.28; and this, according to law, should have been deducted from its taxable assets. Deducting the assessed value of the petitioner's real estate from its gross assets, real and personal, its indebtedness, therefore, upon the said second Monday of January, 1896, exceeded the remainder by $199,001.26, as appears by the foregoing statement.

The said commissioners of taxes and assessments, as already stated, did, in fact, upon April 2, 1896, find and fix the assessed valuation of the personal estate or capital stock of the petitioner at $65,999. Thereafter they had no power to increase the same, and still less had power to do so, except upon giving notice to the petitioner twenty days before the closing of said books of annual record upon May 1, 1896. The said commissioners, nevertheless, assumed to increase said assessment to $165,999 upon April 17, 1896, less than twenty days before the closing of said books of annual record and without giving notice twenty days previously to the closing thereof to the petitioner. Such action was unauthorized by law and contrary to the express provisions of section 819 of the consolidation act.

The tax imposed upon the capital stock of corporations by chapter 456 of the Laws of 1857 is a tax upon their property other than franchises. In the case of individuals the ownership of real estate subjects the owner to taxation upon the assessed value of the
8 real estate and not otherwise. The fourteenth amendment to the Constitution of the United States provides (sec. 1) that no State "shall deny to any person within its jurisdiction the equal protection of the laws." Corporations are persons within the meaning of this provision. The commissioners of taxes and assessments have adopted an erroneous construction of the statute in question, in that they have construed it as subjecting the petitioner, because it owns real estate, to taxation not only upon the assessed value of the real estate, but also upon its actual cost, although the assessed value is the same as the actual value and much less than the actual cost. This construes the statute as imposing on one class of persons, namely, corporations, taxation at a greater rate than upon another class of persons by reason of ownership of property identically similar in character. Obviously, such a construction renders the statute unconstitutional. Moreover, it is inconsistent with the provision of the Revised Statutes that "the real estate of all incorporated companies liable to taxation shall be assessed in the town or ward in which the same shall lie, *in the same manner* as the real estate of individuals." (1 R. S., 389, sec. 6.) It is inconsistent, too, with the provisions of chapter 456 of the Laws of 1857, that the capital stock of every company liable to taxation "shall be taxed *in the same manner* as the *other* real and personal estate of the county."

VIII. The petitioner, therefore, upon said second Monday of January, 1896, had no personal property or capital stock which was subject to assessment or tax within the city and county of New York, and the decision or action of the commissioners of taxes and assessments of said city and county in assessing the petitioner thereon and the assessment amounting to $165,999 imposed by them upon the personal property or capital stock of the petitioner as above stated, were and are illegal by reason of the particulars and grounds specified and given in this petition and the exhibits
9 attached thereto, and the same were and are erroneous by reason of overvaluation inasmuch as the petitioner had upon said second Monday of January, 1896, no personal property or capital stock subject to taxation within the said city and county. The petitioner is or will be injured by such illegal and erroneous assessment, because the president of the board of aldermen in the name of the board and as one of its acts, has already authorized and requested the commissioners of taxes and assessments to estimate and compute the taxes to be imposed under and by virtue of said rolls, and to cause the said estimation and computation to be properly set down and extended in the said tax or assessment rolls, and to perform such other duty connected with the said tax or assessment rolls or books as the said president is authorized or required by law to have done. And unless said assessment be reviewed according to law and canceled the petitioner will be compelled to pay taxes

thereon at the rate at which taxes may be payable, notwithstanding that upon the second Monday of January, 1896, it had and now has no taxable personal property or capital stock within the city and county of New York. No previous application has been made in the premises for the allowance and issue of a writ of *certiorari*.

Wherefore, the petitioner prays that a writ of *certiorari* may be issued and allowed by this honorable court directed to the commissioners of taxes and assessments for the city and county of New York commanding them to certify and return to this court all and singular their proceedings, decisions and action in the premises, with the reasons therefor, and the evidence considered by them, and the dates respectively, and all and singular said assessments and the documents and papers before them relating thereto, touching or concerning the valuation or assessment of the personal property or capital stock of the petitioner, or in anywise in respect thereto, and all and singular their decisions and actions thereon and the statement and protests, record and papers before them touching or concerning the same, and that the said decision and action of said commissioners may be reviewed and corrected on their merits and that the same may be reversed and altogether held for nothing, and that the aforesaid errors may be corrected according to law, or that the petitioner may have such other or further relief in the premises as may be meet.

And the petitioner will ever pray, &c.

THE NEW YORK CLEARING HOUSE BUILDING COMPANY,
By G. G. WILLIAMS, *President.*

BRISTOW, OPDYKE & WILLCOX,
Attorneys for Petitioner, 20 *Nassau Street, New York, N. Y.*

CITY AND COUNTY OF NEW YORK, *ss:*

George G. Williams, being duly sworn, says that he is the president of The New York Clearing House Building Company, the petitioner above named; that the foregoing petition is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true; that the grounds of deponent's belief as to all matters in said petition not stated upon his knowledge are his familiarity with said petitioner's business affairs as said president thereof; that the reason why this verification is not made by the said petitioner is that the said petitioner is a domestic corporation, and unable to make the same.

G. G. WILLIAMS.

Sworn to before me this 15th day of July, 1896.
EDW'D P. BROWN,
Notary Public, Kings Co.

Cert. filed — N. Y. Co.

11 EXHIBIT A.

City of New York, department of taxes and assessments.

COMMISSIONERS' OFFICE,
STEWART BUILDING, 280 BROADWAY.

Please state the full name of the corporation.

Statement made and delivered to the commissioners of taxes and assessments of the city and county of New York for and in behalf of the N. Y. Clearing House Building Company, showing its condition, for the purpose of assessment, on the second Monday of January, 1896.

See note 1.

Total gross assets, real estate, $600,000, personal, $130,049.02	$730,049 02
Capital stock actually paid in, or secured to be paid in	900,000
Amount of surplus earnings	None.
Rate of dividend for last year, or last annual dividend	None.

Indebtedness in detail as follows:

Moneys borrowed	230,000
Money owing on building contract	99,050 28

Has any portion of above indebtedness been contracted or incurred in the purchase of non-taxable properties or securities, or for the purpose of evading taxation? No.

Assessed value of real estate, $600,000.

Describing particularly by ward and ward map numbers.

Ward 1, map No. 1208, Cedar street.

Note 1.—The lots and building cost the company about $965,000, but the building was considered especially for the business of the N. Y. Clearing House Association and is not adapted for any other use, so that
12 *its market value is not equal to its cost. Furniture, &c., cost $25,069.14. Cash in bank, $104,979.88.*

Amounts invested in the stocks of other corporations which are taxed upon their capital	$ None.
Amount invested in U. S. securities	None.

(If the stock of the company is worth less than par, state the actual value, and give the facts under oath which will justify such estimate of its value.) The stock on January 13, 1896, was worth less than par, for the reason that the company owned no property of any kind except its real estate as above, which is assessed for $600,000, and personal property of a value not exceeding $130,049.02, and the company owed $329,050.28. The stock is worth less than the cost of the company's real estate.

The principal office or place of transacting the financial business of the said corporation is situated in the first ward of the city of New York, at No. 77 Cedar street.

CITY OF NEW YORK, *ss:*

I, George G. Williams, the president of the said corporation, being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

G. G. WILLIAMS, *Pt.*

Sworn to before me this 7th day of March, 1896.

EDWARD P. BROWN,

[NOTARIAL SEAL.] *Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

13 EXHIBIT B.

City of New York, department of taxes and assessments.

In the Matter of the Statement of THE NEW YORK CLEARING HOUSE BUILDING COMPANY for the Purpose of Assessment on the Second Monday of January, 1896.

STATE OF NEW YORK, *City and County of New York,* } *ss:*

George G. Williams, being duly sworn, says as follows:

Deponent is the president of the New York Clearing House Building Company, and heretofore on or about the — day of ——, 1896, he verified, as such president, and had submitted to the department of taxes and assessments, a return herein. By reason of misapprehension of what was required to be shown by the said return the gross assets of the said company were stated in the said return at $1,094,944.66. The amount so stated as the value of the gross assets was merely the book value of such assets (*i. e.*, their cost, together with the expenses paid, including interest and taxes) and not their actual value. The actual value of the said assets for any purpose was less than such book value, and also less than the original cost value which entered into such book value.

The only assets of the said company consist of four lots of land in Cedar street, together with the building thereon erected by the said company, and the furniture placed therein and cash on hand.

The said building was erected expressly for the use of the
14 New York Clearing House Association in effecting exchanges between the associated banks and the settlement of the balances arising thereon, and was expressly planned to facilitate the speedy and safe making of such exchanges and the payment of such balances. The said building is not fitted for any other use, and consequently its market value is in fact less than its cost to the company. The cost to the company of the said lots and building was about $965,000, but in view of the absence of any general mar-

ket value for a building not fitted for other than a single use, the said building has been properly assessed for taxation at not over $600,000.

The only other property of the said company on January 13, 1896, consisted of personal property contained in the said building, together with books, &c., which costs the sum of $25,069.14, and of cash then on hand amounting to $104,979.88—in all $130,049.02.

On the other hand, the company then owed for money borrowed from the Clearing House Association the amount of $230,000, and also owed upon contracts for the construction of its building the amount of $99,050.28.

Also, by misapprehension the said return heretofore filed herein stated the assessed value of the company's real estate at $350,000, which was the assessed value for the year 1896, whereas the said real estate has been assessed upon the books of the tax department for the year 1896, at the amount of $600,000.

Deponent, therefore, attaches hereto and presents to the said commissioners an amended return on behalf of the said company, which it desires to be treated as its return for taxation herein for the year 1896.

G. G. WILLIAMS.

Sworn to before me this 7th day of March, 1896.

EDW'D P. BROWN,
Notary Public, Kings Co.

[NOTARIAL SEAL.]

Cert. filed — N. Y. Co.

15 EXHIBIT C.

Department of taxes and assessments, Stewart building, 280 Broadway.

NEW YORK, *Ap'l 2d*, 1896.

To the N. Y. Clearing House Building Company, 77 Cedar St.:

You are hereby notified that the board of taxes and assessments find the taxable value of your capital for this year to be $65,999.

Respectfully,

E. T. TAGGARD,
Deputy Tax Commissioner.

The records of this department must be completed on the 31st day of May in each year.

16 EXHIBIT D.

Bristow, Opdyke & Willcox, 20 Nassau St., New York.

APRIL 13, 1895.

To the commissioners of taxes and assessments of the city and county of New York:

The New York Clearing House Building Company, considering itself aggrieved by the assessed valuation for 1896 of its real and

personal estate, hereby applies to have the same corrected and states the grounds of objection thereto as follows:

The Revised Statutes provide that "the real estate of all incorporated companies liable to taxation shall be assessed in the town or ward in which the same shall lie *in the same manner as the real estate of individuals*" (1 R. S., 389, sec. 6). Chapter 456 of the Laws of 1857 provides that "the capital stock of every company liable to taxation" (after making certain specified deductions) "shall be assessed at its actual value and *taxed in the same manner as the other real and personal estate of the county.*"

It will be observed that the use of the expression that the capital stock is to be assessed at its "actual value" indicates no different rule regarding the assessment of the capital stock of corporations from that applying to assessable property generally. For "there can be no doubt that these various expressions used in the statutes" (to denote the rate at which property is to be assessed) "all are intended to mean the actual value of the property" (People *ex rel.* M. R. Co. *vs.* Barker, 146 N. Y., 304, 312). The rule regarding taxable property generally is, then, that it is to be assessed at its actual value and the statutes provide in terms that the property of corporations "shall be assessed in the same manner as (that) of individuals" (1 R. S., 389, sec. 6); "shall be taxed in the same manner as the other real and personal estate of the county" (Laws of 1857, ch. 456).

17 The "capital stock" which is subjected to taxation (Laws of 1857, ch. 456) is merely the real and personal property owned by the corporation other than its franchise (People *ex rel.* Union Trust Co. *vs.* Coleman, 126 N. Y., 433). And "a tax upon the actual value of the capital of a corporation is a tax upon the property in which such capital may be invested" (People *ex rel.* Edison Co. *vs.* Barker, 139 N. Y., 55; Pullman Car Co. *vs.* Pennsylvania, 141 U. S., 25).

If these principles be applied to the facts set forth in the statement made and delivered to yourselves for and in behalf of the New York Clearing House Building Company, showing its condition for the purpose of assessment, on the second Monday of January, 1896, it will be seen that the company has no assessable property within the county of New York.

The only assets of the company consist of four lots of land in Cedar street, together with a building erected thereon by the company, and personal property consisting of furniture and cash. This real estate, as already pointed out, is to be assessed "in the same manner as the real estate of *individuals*" (1 R. S., 389, sec. 6), in the same manner as the *other real estate of the county* (Laws of 1857, ch. 456). In performance of your duty in this regard, you have assessed this real estate of the company at $600,000. The value thus fixed by yourselves in accordance with law is presumptively the actual value of the real estate in question (People *ex rel.* M. R. Co. *vs.* Barker, 146 N. Y., 304, 313). Moreover, while it has cost the company more than this, the affidavit of George G. Williams, the president of the company, which has been filed with you, shows that your action in

that regard is correct, and that the value of this real estate does not exceed the amount at which you have placed it.

If this real estate were owned by an individual, it would,
18 therefore, be assessed at the sum of $600,000. But, as already said, the statutes provide that it shall be assessed "in the same manner" as the real estate of individuals—as the other real estate of the county, The ownership thereof cannot, therefore, subject the owner to a greater amount of assessment and taxation because such owner happens to be a corporation instead of an individual. As already said, the tax imposed on corporations is a tax merely upon their property. This piece of property of the Clearing House Building Company has been assessed by yourselves at the sum of $600,000 as its actual value. An individual owning it would pay taxes upon account thereof at that sum and no more. For the reasons already stated no different rule is applicable in the case of ownership by a corporation.

You cannot, therefore, assess the company at a greater rate in regard to this property on the theory that its actual value is greater than its assessed value. Nothing of the sort could be done in the case of an individual owner. Equally, therefore, it cannot be done in the case of a corporate owner. Moreover, it is now held by authority that the statutory expression "assessed value" is the same as actual value; in the eye of the law no difference can exist, for to hold otherwise would be to concede that it may be recognized as a principle of taxation and judicial decision that the assessing officials do not perform their duty (People *ex rel.* M. R. Co. *vs.* Barker, 146 N. Y., 304, 312).

Finally, if it were the case that there was a difference between the assessed and the actual value of this real estate, would that difference constitute property of any sort which could be subjected to assessment independently of the real estate itself? Because there was such a margin could the owner be subjected to any assessment in addition to that already imposed upon the real estate? What
19 would be the subject of such further assessment? Not real estate, because that has been already assessed. Not personal property, because the fact that public officials have assessed a person's real estate below its value cannot establish that he is in possession of a corresponding amount of personal property. It must, therefore, necessarily be the fact that an undervaluation of a particular parcel of real estate constitutes no legal ground for imposing upon the owner an assessment additional to or independent of that already made upon the real estate. Where the owner is an individual this will not be disputed. It must equally be the fact where a corporation is the owner, because, as already frequently pointed out, the statutes in terms provide that the manner of assessment and taxation of the property of corporations must be the same as that of individuals.

The conclusion is, therefore, inevitable that the Clearing House Building Company can be assessed by reason of its ownership of this real estate at no greater sum than $600,000. The remaining property of the company clearly does not render it liable to assess-

ment. This consists merely of personal property to the amount of $130,049.02. The indebtedness of the company largely exceeds this sum, being $329,050.28. It is well settled that in the case of domestic corporations in arriving at the sum at which they are properly assessable the amount of their debts should be deducted from their assets (People *ex rel. vs.* Barker, 141 N. Y., 196). The debts of the Clearing House Building Company, as above shown, largely exceed its personal property, and it is not assessable by reason of ownership of any property of that character. Its real estate has been assessed by yourselves at the sum of $600,000 as its actual value, and the company is not assessable at any greater sum by reason of its ownership thereof.

20 These considerations show that the New York Clearing House Building Company is not taxable within New York county upon its capital. The company therefore respectfully applies to have the assessed valuation of the same corrected by striking from "the annual record of assessed valuation of real and personal estate" for the present year any assessment against the company by reason thereof.

THE NEW YORK CLEARING HOUSE BUILDING COMPANY,
By G. G. WILLIAMS, *Pt.*

21 EXHIBIT E.

Department of taxes and assessments, Stewart building, 280 Broadway.

NEW YORK, *Ap'l* 17, 1896.

To the N. Y. Clearing House Building Company, 77 Cedar St.:

You are hereby notified that the board of taxes and assessments find the taxable value of your capital for this year to be $165,999.

Respectfully, E. T. TAGGARD,
Deputy Tax Commissioner.

Second notice.

The records of this department must be completed on the 31st day of May in each year.

22 *Writ of Certiorari.*

The People of the State of New York on the relation of the New York Clearing House Building Company to Edward P. Barker, Theodore Sutro, and James L. Wells, Esqrs., commissioners of taxes and assessments for the city and county of New York, Greeting:

Whereas we have been informed by the duly verified petition of the petitioner, The New York Clearing House Building Company, that certain proceedings were had before you in regard to the assessment and taxation for the year 1896 of the said petitioner, and that you have decided to assess the said petitioner upon and in respect of the personal property or capital stock held by it, upon the second

Monday of January, 1896, in the sum of $165,999, and found that it is assessable at that sum for the year 1896, and have refused to correct or cancel the said assessment upon the petitioner's application, although the same was claimed to be illegal and erroneous, by reason of overvaluation, because the petitioner then had and now has no personal property or capital stock within the city and county of New York subject to taxation, and you have included the said assessment in the assessment rolls for the year 1896, prepared by you for delivery to the board of aldermen of the city and county of New York and delivered to said board, and it is specified in said petition that the said assessment is illegal, giving the particulars of the alleged illegality, and is erroneous by reason of overvaluation, stating the amount of such overvaluation, and that the petitioner will be injured by such alleged illegal or erroneous assess-
23 ment, and fifteen days have not expired since such delivery of said assessment-rolls, and we, being willing for certain causes to be certified of such proceedings and of the action had by and before you, the said commissioners, in the matter of the assessment for taxation of the petitioner for the year 1896, and of the decision made by you on the application of the said petitioner in that regard, do command you that you certify and return under your hands and as amply as the same remains before you:

First. Those proceedings regarding the said assessment against the petitioner with all things appertaining thereto, and with that part of the record of valuation and assessment relating to the same.

Second. Any and all papers submitted by the petitioner and filed with you, and any examination under oath or otherwise of said petitioner.

Third. Any other evidence or information, if any, before you or considered by you in arriving at your decision, and if there were no such other evidence or information that you so state.

Fourth. Your reasons for arriving at such decision and the method adopted by you in arriving at the same and under what law and by virtue of what power the said assessment is made.

Unto our supreme court at a special term, part II thereof, to be held in the court-house, in the city of New York, on the first Monday of September, 1896, at the opening of court on that day, or as soon thereafter as a hearing can be had, so that our supreme court may further cause to be done thereupon what of right and according to law ought to be done, and have you then and there this writ; and the return hereto must be made and served upon the relator's attorney within the time above specified.

Witness, Hon. Abraham R. Lawrence, one of the justices
24 of said supreme court, at the court-house, in the city of New York, on the sixteenth day of July, 1896.

By the court:

[Seal of the Supreme Court.]

HENRY D. PURROY, *Clerk.*

BRISTOW, OPDYKE & WILLCOX,
Attorneys for Relator, 20 *Nassau Street, New York, N. Y.*

The foregoing writ is allowed this 16th day of July, 1896.

AB'M R. LAWRENCE, *J. S. C.*

To Messrs. Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments for the city and county of New York:

Please take notice that a writ of *certiorari* has been duly granted herein, of which the foregoing is a copy, and the original of which is herewith exhibited to you, and will be forthwith filed in the office of the clerk of this court.

Dated New York, July 16, 1896.

Yours, &c., BRISTOW, OPDYKE & WILLCOX,
Attorneys for Relator.

25 *Return.*

(Writ.)

The People of the State of New York on the relation of the New York Clearing House Building Company to Edward P. Barker, Theodore Sutro, and James L. Wells, Esqs., commissioners of taxes and assessments for the city and county of New York, Greeting:

Whereas, we have been informed by the duly verified petition of the petitioner, The New York Clearing House Building Company, that certain proceedings were had before you in regard to the assessment and taxation for the year 1896 of the said petitioner, and that you have decided to assess the said petitioner upon and in respect of the personal property or capital stock held by it upon the second Monday of January, 1896, in the sum of $165,999, and found that it is assessable at that sum for the year 1896, and have refused to correct or cancel the said assessment upon the petitioner's application, although the same was claimed to be illegal and erroneous, by reason of overvaluation, because the petitioner then had, and now has, no personal property or capital stock within the city and county of New York subject to taxation, and you have included the said assessment in the assessment-rolls for the year 1896, prepared by you for delivery to the board of aldermen of the city and county of New York, and delivered to said board; and it is specified in said petition that the said assessment is illegal, giving the particulars of the alleged illegality, and is erroneous by reason of overvaluation, stating the amount of such overvaluation, and that the petitioner will be injured by such alleged illegal or erroneous assess-

26 ment, and fifteen days have not expired since such delivery of said assessment-rolls, and we, being willing, for certain causes, to be certified of such proceedings, and of the action had by and before you, the said commissioners, in the matter of the assessment for taxation of the petitioner for the year 1896, and of the decision made by you on the application of said petitioner in that regard, do command you that you certify and return under your hands and as amply as the same remains before you:

First. Those proceedings regarding the said assessment against the petitioner, with all things appertaining thereto, and with that part of the record of valuation and assessment relating to the same.

Second. Any and all papers submitted by the petitioner and filed with you, and any examination under oath or otherwise of said petitioner.

Third. Any other evidence or information, if any, before you or considered by you in arriving at your decision, and if there were no such other evidence or information that you so state.

Fourth. Your reasons for arriving at such decision and the method adopted by you in arriving at the same, and under what law and by virtue of what power the said assessment is made.

Unto our supreme court at a special term, part II thereof, to be held in the court-house in the city of New York, on the first Monday of September, 1896, at the opening of court on that day, or as soon thereafter as a hearing can be had, so that our supreme court may further cause to be done thereupon what of right and
27 according to law ought to be done, and have you then and there this writ, and the return hereto must be made and served upon the relator's attorney within the time above specified.

Witness Hon. Abraham R. Lawrence, one of the justices of said supreme court, at the court-house, in the city of New York, on the 16th day of July, 1896.

By the court:

[Seal of the Supreme Court.]

HENRY D. PURROY, *Clerk.*

BRISTOW, OPDYKE & WILLCOX,
Attorneys for Relator, 20 *Nassau Street*, *New York*, *N. Y.*

The foregoing writ is allowed this 16th day of July, 1896.

AB'M R. LAWRENCE, *J. S. C.*

28 Supreme Court, City and County of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Clearing House Building Company	
against	Taxes of 1896.
EDWARD P. BARKER, THEODORE SUTRO, and James L. Wells, the Commissioners of Taxes and Assessments of the City of New York.	

To the supreme court of the State of New York:

Edward P. Barker, Theodore Sutro and James L. Wells, the commissioners of taxes and assessments of the city of New York, respectfully return to the writ of *certiorari* hereto prefixed and issued out of this court on the 16 day of July, 1896, as follows:

Between the first Monday of September, in the year 1895, and the se ond Monday of January, 1896, the deputy tax commissioners

of the city of New York, under our direction, assessed all the taxable property in the several districts of said city that were assigned to them respectively for that purpose, and furnished to us, under oath, a detailed statement of all such property; that said deputies have personally examined each and every house, building, lot, pier or other assessable property, giving the street and ward map number of such real estate embraced within said districts, together with the name of the owner or occupant, if known; also, in their judgment, the sum for which such property, under ordinary circumstances, would sell, with such other information in detail, relative to personal property or otherwise, as the commissioners of taxes and assessments from time to time required; and the assessed valuations so made of all such property within the city of New York were duly entered in detail in books provided for that purpose by the comptroller, and kept in our office in the city of New York, called "The annual record of assessed valuation of real and personal estate." The deputy tax commissioner assigned to that duty, under our direction, between said times, duly assessed the capital and surplus of the relator for the year 1896, at the sum of nine hundred thousand dollars ($900,000) and duly entered such assessment in said books, and thereafter notice of such assessment was sent to said relator.

The said books were kept open in our office, for examination and correction, from the second Monday of January, 1896, until the first day of May, 1896, and previous to and during the time said books were open for inspection the fact was duly advertised according to law. During the time said books were open to public inspection, as above stated, written application was made by the said relator to have the assessed valuation corrected. And thereupon the said relator submitted — us, and filed in our office, a statement in writing, of which a copy marked "Schedule A," is hereto attached and made part of this return. Thereupon we examined into the complaint so made by the relator, and considered such application and fixed the amount of such assessment at the sum of one hundred and sixty-five thousand, nine hundred and ninety-nine ($165,999) dollars, which we believed to be just, and which we decided to be the sum for which said relator was lawfully assessable for the year 1896, and thereupon said assessment theretofore entered in said books of annual record was corrected in accordance with our decision. A copy of said assessment, as it appears upon said books of annual record, marked "Schedule B," is hereto annexed and made part of this return. The figures erased on said schedule indicate the original assessment made by the deputy tax commissioner.

Thereafter, we caused to be duly prepared from said books of annual record assessment-rolls for each of the several wards of the said city, and annexed to each of said rolls our certificate that the same was correct, in accordance with the entry in said books of record, and on the first Monday of July, 1896, the rolls thus certified were delivered by us to the board of aldermen of the city of New York, at the city hall in said city.

We further return that the method by which we made our said assessment for the purpose of taxation for the year 1896, was as follows:

We ascertained that the petitioner was duly incorporated pursuant to the business corporation law of the State of New York on the 18th day of January, 1894, for the purpose, as specified in its certificate of incorporation, of purchasing land and erecting, fitting, furnishing and maintaining buildings thereon, in which buildings there should be accommodations secured for the use of the New York Clearing Association.

That the relator was taxable under chapter 456 of the Laws of 1857.

On the second Monday of January, 1896, the relator was assessed upon the books of annual record of the assessed valuation of real and personal estate for $900,000.

Under date of January 17, 1896, upon an application for the revision and cancellation against it, the relator filed a verified statement purporting to disclose its condition for purposes of taxation upon its capital and surplus for the year 1896, by which statement it stated its total gross assets at $1,094,944, its capital stock actually paid in or secured to be paid in at $900,000, exhibited no surplus nor — that any dividend had been declared. Its total indebtedness was returned at $329,050 and the assessed value of its real estate at the sum of $350,000.

Upon this statement, which is attached to our return as
31 Schedule A, if we had accepted all of the statements of fact made by the relator as true and from its total gross assets as exhibited by the relator had deducted the amount of its debts and the assessed value of its real estate as returned by it the relator would have been assessable upon its capital and surplus in the sum of $415,895.

Under date, however, of March 7, 1896, the relator filed with us an amended application for a cancellation of the assessment against its capital and surplus for purposes of taxation for the year 1896 as well as an affidavit of its president, which application and affidavit are returned herewith as Schedules A1 and A2, by which application and affidavit the relator not only claimed to disclose its actual condition for purposes of taxation upon its capital and surplus upon the second Monday of January, 1896, but as well to correct certain errors and mistakes contained in its prior application and statement returned herewith as Schedule A.

By the second statement filed the relator pretended to disclose its total gross assets at the sum of $730,049, but in the exhibition so made, its real estate was included only at its assessed value. It exhibited its capital stock actually paid in or secured to be paid in at $900,000, disclosed no surplus earnings nor the payment of any dividend. Its debts it disclosed at $329,050, but in a note upon the face of the amended application showed the cost of its real estate to have been $965,000.

We accepted as true all of the statements of fact contained in the said amended statement of the relator except the claim and allega-

tion that the market value of the real estate of the relator was not equal to its cost, since upon that proposition no evidence was offered on the part of the relator, and we were satisfied that the contrary was true and that the actual value of the real estate of the relator was measured on the second Monday of January, 1896, by its cost.

32 We therefore ascertained the value of the total gross assets of the relator on the second Monday of January, 1896, to have been..... ..... $1,095,049

From such aggregate we deducted:

1st. The debts of the relator.....	$329,050	
2nd. The assessed value of its real estate.....	600,000	
		929,050
Leaving the relator assessable upon its capital and surplus on the second Monday of January, 1896, for....		165,999

We fixed the assessment at that sum and so advised the relator. Thereafter and on April 13, 1895, relator, by its counsel, filed with us a written argument claiming to exhibit to us the law which should govern our action upon the several applications of the relator for cancellation of the assessment against its capital and surplus for the year 1896. The same is hereto attached and marked "Schedule A3." We declined to accept such conclusions as a correct statement of law, but being on the contrary advised that upon the facts the assessment as fixed by us was in entire accordance with the law governing our action and being satisfied that the said assessment was in all respects just and proper, we finally fixed the assessment against the capital and surplus of the relator for purposes of taxation for the year 1896 at the sum of $165,999.

With regard to the statements contained in said writ, and the petition upon which the same was granted, to the effect that said assessment is erroneous by reason of overvaluation, or is unequal, in that it was made at a higher proportionate valuation than other real or personal property on the same rolls, or that the said assessment, upon any of the grounds specified in said petition, is
33 illegal, erroneous or void, we certify and return, upon information and belief, that each and every of such statements is untrue.

In witness whereof, we have hereunto subscribed our names, this 5 day of November, 1896.

EDWARD P. BARKER,
THEODORE SUTRO,
Commissioners of Taxes and Assessments.

CITY AND COUNTY OF NEW YORK, *ss:*

Edward P. Barker, Theodore Sutro and James L. Wells, being severally duly sworn, say, and each for himself says, that the foregoing return is true to his knowledge, except as to the matters

therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

E. P. BARKER.
THEODORE SUTRO.

Sworn to before me this 5 day — November, 1896.
C. ROCKLAND TYNG,
Notary Public, New York County.

34 SCHEDULE A.

City of New York, department of taxes and assessments.

COMMISSIONERS' OFFICE,
STEWART BUILDING, 280 BROADWAY.

☞Please state the full name of the corporation.

Statement made and delivered to the commissioners of taxes and assessments of the city and county of New York for and in behalf of the N. Y. Clearing House Building Company, showing its condition for the purpose of assessment on the second Monday of January, 1896.

*Total gross assets	$1,094,944 66
*Capital stock actually paid in, or secured to be paid in	900,000 00
Amount of surplus earnings	"
Rate of dividend for last year, or last annual dividend	"

Indebtedness in detail as follows:

N. Y. Clearing House Ass'n loan	230,000 00
Due on contracts for new clearing-house	99,050 28

Has any portion of above indebtedness been contracted or incurred in the purchase of non-taxable property or securities, or for the purpose of evading taxation? No.

Assessed value of real estate:

Describing particularly by ward and ward map numbers.

Ward 1. Ward map No. 1208 Cedar St.	$350,000 00
Amounts invested in the stocks of other corporations which are taxed upon their capital	
Amount invested in U. S. securities	

35 (If the stock of the company is worth less than par, state the actual value, and give the facts under oath which will justify such estimate of its value.) *The entire capital of this company is invested in real estate. The gross assets represent the price paid for ground and the cost of construction of building to date. The company was organized merely to erect and hold title to the building on the above-described premises.

The principal office or the place of transacting the financial business of the said corporation is situated in the 1st ward of the city of New York, at No. 14 Pine St.

CITY OF NEW YORK, *ss:*

I, George G. Williams, the president of the said corporation, being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

G. G. WILLIAMS,
N. Y. Clearing House Building Co.

Sworn to before me this 17th day of Jan'y, 1896.
EDW'D P. BROWN,
Notary Public, Kings Co.

Cert. filed — N. Y. Co.

☞ The commissioners are empowered to examine, under oath, the person representing the corporation, if they deem it necessary, to obtain any fuller or further particulars as to its property or condition.

(Endorsed:) Line No. 1887. Statement of the N. Y. Clearing House Building Co. for 1896. Assessment fixed at $165,999. Barker, Wells, commissioners of taxes and assessments.

36 SCHEDULE A 1.

City of New York, department of taxes and assessments.

COMMISSIONERS' OFFICE,
STEWART BUILDING, 280 BROADWAY.

☞ Please state the full name of the corporation.

Statement made and delivered to the commissioners of taxes and assessments of the city and county of New York for and in behalf of the N. Y. Clearing House Building Company, showing its condition for the purpose of assessment on the second Monday of January, 1896.

See note I.

Total gross assets—real estate, $600,000; personal, $130,049.02	$730,049 02
Capital stock actually paid in or secured to be paid in.	900,000
Amount of surplus earnings	None.
Rate of dividend for last year, or last annual dividend	None.

Indebtedness in detail as follows:

Money borrowed	$230,000
Money owing on building contract	99,050 28

Has any portion of above indebtedness been contracted or incurred in the purchase of non-taxable property or securities, or for the purpose of evading taxation? No.

Assessed value of real estate, $600,000.

Describing particularly by ward and ward map numbers.

Ward 1, map 1208, Cedar street.

37 NOTE 1.—The lots and building cost the company about $965,000, but the building was constructed especially for the business of the N. Y. Clearing House Association, and is not adapted for any other use, so that its market value is not equal to its cost. Furniture, &c., cost $25,069.14. Cash in bank, $104,979.88.

Amounts invested in the stocks of other corporations which are taxed upon their capital ..... None.

Amount invested in U. S. securities..... None.

(If the stock of the company is worth less than par, state the actual value, and give the facts under oath which will justify such estimate of its value.) The stock on January 13, 1896, was worth less than par, for the reason that the company owned no property of any kind except its real estate as above, which is assessed for $600,000; and personal property of a value not exceeding $130,049.02; and the company owed $329,050.28. The stock is worth less than the cost of the company's real estate.

The principal office, or the place of transacting the financial business of the said corporation, is situated in the first ward of the city of New York, at No. 77 Cedar street.

CITY OF NEW YORK, *ss:*

I, George G. Williams, the president of the said corporation, being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

G. G. WILLIAMS, *Pt.*

Sworn to before me this 7 day of March, 1896.

EDW'D P. BROWN,
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

38 ☞ The commissioners are empowered to examine, under oath, the person representing the corporation, if they deem it necessary, to obtain any fuller or further particulars as to its property or condition.

(Endorsed:) Line No. 1887. Statement of the N. Y. Clearing House Building Co. for 1896. Assessment fixed at $165,999. Barker, Wells, commissioners of taxes and assessments.

39 SCHEDULE A 2.

City of New York, department of taxes and assessments.

In the Matter of the Statement of THE NEW YORK CLEARING HOUSE BUILDING COMPANY for the Purpose of Assessment on the Second Monday of January, 1896.

STATE OF NEW YORK, }
City and County of New York, } ss.:

George G. Williams, being duly sworn, says as follows:

Deponent is the president of the New York Clearing House Building Company, and heretofore on or about the — day of —, 1896, he verified, as such president, and had submitted to the department of taxes and assessments a return herein. By reason of misapprehension of what was required to be shown by the said return the gross assets of the said company were stated in the said return at $1,094,944.66. The amount so stated as the value of the gross assets was merely the book value of such assets (*i. e.*, their cost, together with the expenses paid, including interest and taxes), and not their actual value. The actual value of the said
40 assets for any purpose was less than such book value, and also less than the original cost value which entered into such book value.

The only assets of the said company consist of four lots of land in Cedar street, together with the building thereon erected by the said company, and the furniture placed therein, and cash on hand.

The said building was erected expressly for the use of the New York Clearing House Association in effecting exchanges between the associated banks and the settlement of the balances arising thereon; and was expressly planned to facilitate the speedy and safe making of such exchanges and the payment of such balances. The said building is not fitted for any other use, and consequently its market value is, in fact, less than its cost to the company. The cost to the company of the said lots and building was about $970,000, but in view of the absence of any general market value for a building not fitted for other than a single use, the said building has been properly assessed for taxation at not over $600,000.

The only other property of the said company on January 13, 1896, consisted of personal property contained in the said building, together with books, &c., which cost the sum of $25,069.14, and of cash then on hand amounting to $104,979.88, in all, $130,049.02.

On the other hand, the company then owed for money borrowed from the Clearing House Association the amount of $230,000, and also owed upon contracts for the construction of its building the amount of $99,050.28.

Also, by misapprehension the said return heretofore filed herein stated the assessed value of the company's real estate at $350,000, which was the assessed value for the year 1896, whereas the said

real estate has been assessed upon the books of the tax department for the year 1896 at the amount of $600,000.

Deponent therefore attaches hereto and presents to the
41 said commissioners an amended return on behalf of the said company, which it desires to be treated as its return for taxation herein for the year 1896.

G. G. WILLIAMS.

Sworn to before me this 7th day of March, 1896.

EDW'D P. BROWN,
Notary Public, Kings Co.

Cert. filed N. Y. Co.

SCHEDULE A 3.

Bristow, Opdyke & Willcox, 20 Nassau St., New York.

Benj. H. Bristow. Wm. S. Opdyke. David Willcox.
Wm. B. Bristow.

APRIL 13, 1895.

To the commissioners of taxes and assessments of the city and county of New York:

The New York Clearing House Building Company, considering itself aggrieved by the assessed valuation for 1896 of its real and personal estate, hereby applies to have the same corrected, and states the grounds of objection thereto as follows:

The Revised Statutes provide that "the real estate of all incorporated companies liable to taxation shall be assessed in the town or ward in which the same shall lie, *in the same manner as the real estate of individuals*" (1 R. S., 389, sec. 6). Chapter 456 of
42 the Laws of 1857 provides that "the capital stock of every company liable to taxation" (after making certain specified deduction), "shall be assessed at its actual value and *taxed in the same manner as the other real and personal estate of the county.*"

It will be observed that the use of the expression that the capital stock is to be assessed at its "actual value" indicates no different rule regarding the assessment of the capital stock of corporations from that applying to assessable property generally. For "there can be no doubt that these various expressions used in the statutes" (to denote the rate at which property is to be assessed), "all are intended to mean the actual value of the property" (People *ex rel.* M. R. Co. *vs.* Barker, 146 N. Y., 304, 312). The rule regarding taxable property generally is, then, that it is to be assessed at its actual value, and the statutes provide in terms that the property of corporations "shall be assessed in the same manner as (that) of individuals" (1 R. S., 389, sec. 6)—"shall be taxed in the same manner as the other real and personal estate of the county" (Laws of 1857, ch. 456).

The "capital stock" which is subjected to taxation (Laws of 1857, ch. 456), is merely the real and personal property owned by the corporation, other than its franchise (People *ex rel.* Union Trust Co.

vs. Coleman, 126 N. Y., 433). And "a tax upon the actual value of the capital of a corporation is a tax upon *the* "the property in which such capital may be invested" (People *ex rel.* Edison Co. *vs.* Barker, 139 N. Y., 55; Pullman's Car Co. *vs.* Pennsylvania, 141 U. S., 25).

If these principles be applied to the facts set forth in the statement made and delivered to yourselves for and in behalf of the New York Clearing House Building Company, showing its condition for the purpose of assessment, on the second Monday of
43 January, 1896, it will be seen that the company has no assessable property within the county of New York.

The only assets of the company consist of four lots of land in Cedar street, together with a building erected thereon by the company, and personal property consisting of furniture and cash. This real estate, as already pointed out, is to be assessed "in the same manner as the real estate of *individuals*" (2 R. S., 389, sec. 6)—in the same manner as the *other real estate of the county* (Laws of 1857, ch. 456). In performance of your duty in this regard, you have assessed this real estate of the company at $600,000. The value thus fixed by yourselves in accordance with law is presumptively the actual value of the real estate in question (People *ex rel.* M. R. Co. *vs.* Barker, 146 N. Y., 304, 313). Moreover, while it has cost the company more than this, the affidavit of George G. Williams, the president of the company, which has been filed with you, shows that your action in that regard is correct and that the value of this real estate does not exceed the amount at which you have placed it.

If this real estate were owned by an individual, it would, therefore, be assessed at the sum of $600,000. But, as already said, the statutes provide that it shall be assessed "in the same manner" as the real estate of individuals—as the other real estate of the county. The ownership thereof cannot, therefore, subject the owner to a great amount of assessment and taxation because such owner happens to be a corporation instead of an individual. As already said, the tax imposed on corporations is a tax merely upon their property. This piece of property of the Clearing House Building Company has been assessed by yourselves at the sum of $600,000 as its actual value. An individual owning it would pay taxes upon account thereof at that sum and no more. For the reason already stated no different rule is applicable in the case of ownership by a corporation.

44 You cannot, therefore, assess the company at a greater rate, in regard to this property, on the theory that its actual value is greater than its assessed value. Nothing of the sort could be done in the case of an individual owner. Equally, therefore, it cannot be done in the case of a corporate owner. Moreover, it is now held by authority that the statutory expression "assessed value" is the same as actual value—in the eye of the law no difference can exist, for to hold otherwise would be to concede that it may be recognized as a principle of taxation and judicial decisions that the assessing officials do not perform their duty (People *ex rel.* M. R. Co. *vs.* Barker, 146 N. Y., 304, 312).

Finally, if it were the case that there was a difference between the assessed and the actual value of this real estate, would that difference constitute property of any sort which could be subjected to assessment independently of the real estate itself? Because there was such a margin could the owner be subjected to any assessment in addition to that already imposed upon the real estate? What would be the subject of such further assessment? Not real estate, because that has been already assessed. Not personal property, because the fact that public officials have assessed a person's real estate below its value cannot establish that he is in possession of a corresponding amount of personal property. It must, therefore, necessarily be the fact that an undervaluation of a particular parcel of real estate constitutes no legal ground for imposing upon the owner an assessment additional to or independent of that already made upon the real estate. Where the owner is an individual this will not be disputed. It must equally be the fact where a corporation is the owner, because, as already frequently pointed out, the statutes in terms provide that the manner of assessment and taxation of the property of corporations must be the same as that of individuals.

45 The conclusion is, therefore, inevitable that the Clearing House Building Company can be assessed by reason of its ownership of this real estate at no greater sum than $600,000.

The remaining property of the company clearly does not render it liable to assessment. This consists merely of personal property to the amount of $130,049.02. The indebtedness of the company largely exceeds this sum, being $329,050.28. It is well settled that, in the case of domestic corporations in arriving at the sum at which they are properly assessable, the amount of their debts should be deducted from their assets (People *ex rel. vs.* Barker, 141 N. Y., 196). The debts of the Clearing House Building Company, as above shown, largely exceed its personal property, and it is not assessable by reason of ownership of any property of that character. Its real estate has been assessed by yourselves at the sum of $600,000, as its actual value, and the company is not assessable at any greater sum by reason of its ownership thereof.

These considerations show that the New York Clearing House Building Company is not taxable within New York county upon its capital. The company, therefore, respectfully applies to have the assessed valuation of the same corrected by striking from "the annual record of assessed valuation of real and personal estate" for the present year any assessment against the company by reason thereof.

THE NEW YORK CLEARING HOUSE
BUILDING COMPANY,
By G. G. WILLIAMS, *Pt.*

46 Supreme Court, City and County of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of the New York Clearing House Building Company
against
EDWARD P. BARKER, THEODORE SUTRO, and James L. Wells, the Commissioners of Taxes and Assessments of the City of New York.
} Taxes of 1896.

SCHEDULE B.

Page.	Line.	Name.	Principal office.	Ward.	Valuation.	Corrected amount.	Remarks.
247	1887	New York Clearing House Building Co.....	77 Cedar...	1	[$900,000]*	$165,999	B. W.

[* Figures enclosed in brackets erased in copy.]

CITY AND COUNTY OF NEW YORK, *ss.:*

I, Edward T. Taggard, one of the deputy tax commissioners of the city of New York, do depose and say, that the foregoing annual record of the assessed valuation of the personal estate of corporate companies and joint stock associations contains a statement of the taxable personal property of such corporations and joint stock associations in this city, for the year one thousand eight hundred and ninety-six (1896).

E. T. TAGGARD,
Deputy Tax Commissioner.

Sworn to before me, this the 11th day of January, 1896.

MORGAN J. O'BRIEN,
Justice of the Supreme Court.

47 *Order Dismissing Writ.*

At a special term, part III, of the supreme court, in and for the city and county of New York, held in the county court-house, in said city, on the 1st day of November, 1897.

Present: Hon. Henry R. Beekman, justice.

(Title of Proceeding.)

The above-named relator having sued out a writ of *certiorari* to review the proceedings of the above-named defendants, in assessing personal property or capital stock of the relator for the year 1896 at the sum of $165,999, and the said writ having come duly on for argument:

Now, upon reading and filing the petition verified the 15th day of July, 1896, with the exhibits thereto attached, the order granting the writ of *certiorari* dated the 16th day of July, 1896, and the writ of *certiorari* therein allowed on the 16th day of July, 1896, and the

return of the defendants thereto, with the schedules thereto attached, filed in the office of the clerk of the city and county of New York on the 5th day of November, 1896, and after hearing David Willcox, Esq., of counsel for the relator, in support of said writ, and James M. Ward, Esq., of counsel for the defendants, in opposition thereto:

Now, upon motion of Francis M. Scott, counsel to the corporation, it is—

Ordered that the prayer of said petitioner be denied, and the said writ of *certiorari* be, and the same hereby is, dismissed with costs to the defendant, to be taxed in accordance with chapter 269 of the Laws of 1880.

Enter.

H. R. B., *J. S. C.*

48 *Judgment.*

(Title of Proceeding.)

The above-named relator having sued out a writ of *certiorari* to review the proceedings of the above-named defendants in assessing the personal or capital stock of the relator for the year 1896, at the sum of $165,999, and the said writ having been duly argued, and an order having been duly entered on the 16th day of November, 1897, dismissing the said writ of *certiorari* with costs, and the costs of the defendants having been duly taxed at the sum of $57.50:

Now, upon motion of Francis M. Scott, counsel to the corporation, it is—

Ordered and adjudged that the prayer of the said petitioner be denied, and that the said writ of *certiorari* be and the same hereby is dismissed; and it is—

Further ordered and adjudged, that the above-named defendants, Edward P. Barker, Theodore Sutro and James L. Wells, commissioners of taxes and assessments of the city of New York, recover of the above-named relator, The New York Clearing House Building Company, the sum of $57.50, the amount of their costs as taxed, and that they have execution therefor.

Dated New York, November 23, 1897.

HENRY D. PURROY, *Clerk.*

49 *Notice of Appeal.*

(Title of Proceeding.)

SIRS: Please take notice that the relator The New York Clearing House Building Company hereby appeals to the appellate division of this court for the first department from the order of Hon. Henry R. Beekman, J., made herein, dated November 1, 1897, and entered and filed in the office of the clerk of the city and county of New York on the 16th day of November, 1897, dismissing a writ of *certiorari* to review the proceedings of the defendants Edward P. Barker, Theodore Sutro and James L. Wells, as commissioners of taxes and assessments of the city of New York, in assessing personal property

or capital stock of the relator for the year 1896, and from each and every part of the said order, and also from the judgment entered thereupon and filed in the office of the clerk of the city and county of New York on the 23d day of November, 1897, and from each and every part of said judgment.

Dated New York, N. Y., December 2, 1897.

Yours, &c.,

OPDYKE, WILLCOX & BRISTOW,
Attorneys for Relator, 20 *Nassau Street, New York, N. Y.*

To the clerk of the city and county of New York; Francis M. Scott, Esq., counsel to the corporation, 2 Tryon row, New York, N. Y.

50 *Waiver of Certification.*

(Title of Proceeding.)

It is hereby stipulated that the foregoing printed papers contain true copies of the notice of appeal, the judgment-roll filed herein, and of all the papers used in the court below in the above-entitled proceeding, and certification in pursuance of section 1353 of the Code of Civil Procedure is hereby waived.

Dated New York, December 20th, 1897.

BRISTOW, OPDYKE & WILLCOX,
Attorneys for Relator and Appellant,
20 *Nassau Street, New York, N. Y.*

FRANCIS M. SCOTT,
Counsel to Corp'n, Attorney for Respondents,
1 *Tryon Row, New York, N. Y.*

51 *Opinion of Beekman, J.*

(Title of Proceeding.)

BEEKMAN, *J.*:

The relator contends that the commissioners of taxes had no right to consider or estimate any other value of its real estate than the asssesed value in determining the amount of its capital which was subject to taxation under chapter 456 of the Laws of 1857. By the terms of that statute, "the capital stock of every company, liable to taxation, except such part of it as shall have been excepted in the assessment-roll, or as shall have been exempted by law, together with its surplus profits or reserved funds, exceeding ten per cent. of its capital, after deducting the assessed value of its real estate and all shares of stock in other corporations actually owned by such company which are taxable upon their capital stock under the laws of this State shall be assessed at its actual value and taxed in the same manner as the other personal and real estate of the county. The learned counsel for the relator has presented a very able and exhaustive brief in support of his contention, but I think the weight of authority in this State is against him. In the case of People *ex rel.* Equitable Gas L. Co. *vs.* Barker (144 N. Y., 94), the

act above referred to was under construction with respect to the very question which is here raised. In delivering the opinion of the court, Andrews, Ch. J., says (p. 100): "But the law governing the taxation of corporations (Laws 1857, ch. 456) requires the valuation of the whole property owned by the corporation, whether real or personal, or both, in order to ascertain the capital which is the subject of taxation (People *ex rel.* Union Trust Co. *vs.* Coleman, 126 N. Y., 433), and from the aggregate is to be deducted the assessed value of the real estate, and the balance is the capital subject to assessment, after deducting debts and any exemptions allowed by law. In assessing the capital of a corporation for the
52 purpose of taxation it is immaterial in which description of property the capital may be invested. Both its real and personal property are to be considered and valued, and from the aggregate value is to be deducted the assessed value of the real estate, for the obvious reason that to that extent a separate taxation is provided (People *ex rel.* Eq. Gas Light Co. *v.* Barker, 66 Hun., 21; affd. in this court in 137 N. Y., 544). In case of corporations it may happen that an undervaluation in the assessment of the real estate as such may be corrected in its valuation as part of the capital, and so the undervaluation may be remedied, and the whole property be subjected to taxation at its real value. The fact, therefore, that the assessed value of the relator's real estate was $1,515,400 does not necessarily show that it was its full value, nor did it, we think, preclude the commissioners from estimating its value for the purpose of ascertaining the capital subject to taxation at its actual value, although it exceeded the assessed value. The act of the commissioners in undervaluing the real estate in its assessment as such did not estop the public nor relieve them of the duty, in ascertaining the value of the capital, to estimate the real estate at its full value. We are not here concerned with any question of inequality of assessment as between the relator and other tax-payers. We hold that the commissioners could legally disregard the assessed value of the real estate in estimating the value of the capital, and the question of legality is the only point now in question." I have quoted quite at length from this case, because it seems to render any further discussion upon the point quite unnecessary. What is there said was intended by the court to be an authoritative and final exposition of the meaning of the statute, as is clearly shown by the final sentence, which sums up the discussion. The case is not overruled by The People *ex rel.* M. R. Co. *v.* Barker (146 N. Y., 304). The court there objected to the particular manner in which the commissioners attempted to value the real estate,
53 characterizing it as founded upon "presumptions figured upon intricate theories," but the case of People *ex rel.* Eq. Gas Light Co. *v.* Barker (*supra*), although twice cited in the opinion, is nowhere referred to with disapproval. Finally, the appellate division in this department has expressed the same rule as one of the established principles in the assessment of corporations for local taxation (People *ex rel.* Subway Co. *v.* Barker, 7 App. Div., 27). In the case at bar the undisputed facts disclosed by the record are that

the relator is a domestic corporation having a paid-up capital of $900,000. Its assets consist of a parcel of land on Cedar street and a building which has been erected thereon, which together have cost about $965,000. Its personal assets, consisting of the equipment of the building and cash on hand, amount to $130,049.02. Its indebtedness is $329,050.28, and the assessed value of the real estate is $600,000. Upon this the commissioners have based an assessment of capital for purposes of taxation amounting to $165,999. This was done by estimating the value of the real estate at its cost, namely: $965,000, and unless in so doing their astion has been arbitrary and unjust, the court will not interfere. It has been properly said that the authority which is vested in the court to review their action "does not mean that the court is to place itself in the position of an assessor, and review the decisions of these officers upon questions of value or appraisement where the officers proceeded upon information or evidence tending to support their decision. The court generally will not look into questions of fact as to the amount or value of the personal estate of a corporation or individual. These are questions for the judgment of the assessors, and their decisions will ordinarily be sustained" (Peo. *ex rel.* Edison E. I. Co. *v.* Barker, 139 N. Y., 55, 60). Is there, then, evidence in the record tending to support the decision of the commissioners that the real estate in question was of the value of $965,000? Cost
54 is evidence of value, especially where, as is claimed here by the relator, the property is unique in character and improved in a way which limits its profitable use to a special and peculiar purpose. The relator does not assume to place a valuation upon the property, nor does it claim that the assessed value is in fact the actual value. While giving the cost in the statement which it submitted to the commissioners, it says that "the building was constructed especially for the business of the N. Y. Clearing House Association, and is not adapted for any other use, so that its market value is not equal to its cost;" but no evidence was presented which indicated what the market value was claimed to be. The affidavit of the president of relator was also submitted, which reiterates this statement, and adds that "in view of the absence of any general market value for a building not fitted for other than a single use, the said building has been properly assessed for taxation at not over $600,000." It is claimed by the relator that under the admissions of the return the commissioners were bound to accept the whole of this statement as a limitation of actual value at the sum of $600,000. The return, however, expressly excepts from the admission "the claim and allegation that the market value of the real estate of the relator was not equal to its cost," and asserts that the contrary was true. It will be observed that the statements of the relator upon the subject are largely argumentative in their nature. Because of the nature of the property, it is claimed that the market value of the property is less than the cost, and for the same reason the assertion is made, not that the property is worth only $600,000, but "has been properly assessed for taxation at not over $600,000." Nowhere does the relator undertake to fix the actual value at any specific

sum. The question was, therefore, fairly open to determination by the commissioners. They had before them elements tending to support the valuation which they affixed to the property; and assuming the absence of a standard of market value, which
55 the relator asserts was the case, it was within their competency to consider the cost as furnishing a guide to a result. They certainly were not bound to adopt the mere conclusions or opinions of the relator, especially as the basis of valuation upon which it insists would import an impairment of its capital of more than fifty per cent. I do not think, therefore, that the action of the commissioners can be characterized as either capricious, arbitrary or unjust, so as to call for any interference with their action by the court. The case is quite different from that of The People *ex rel.* Subway Co. *v.* Barker (7 App. Div., 27). There were circumstances of aggravation there which are without any counterpart in the case at bar, and which make the disposition of that case inapplicable here. It follows from what has been said that the writ must be dismissed, with costs.

56 *Order of Affirmance.*

At a term of the appellate division of the supreme court for the first department, held at the court-house thereof at No. 111 Fifth avenue, in the county of New York, on the 10th day of June, 1898.

Present—

Hon. George C. Barrett, P. J.
Hon. William Rumsey,
Hon. George L. Ingraham,
Hon. Chester B. McLaughlin, } JJ.

(Title of Proceeding.)

The above-named relator having appealed to the appellate division of the supreme court for the first department from the order entered herein in the office of the clerk of the city and county of New York on the 16th day of November, 1897, dismissing the writ of *certiorari* herein and from the judgment entered upon the said order in the office of the clerk of the city and county of New York on the 23d day of November, 1897, and the said appeal having come duly on to be heard, now, after hearing David Willcox, Esq., of counsel for the relator, in support of said appeal, and James M. Ward, Esq., of counsel for the defendants, in opposition thereto, and due deliberation having been had, on motion of John Whalen, corporation counsel, it is

Unanimously ordered that the said order and judgment so appealed from as aforesaid be, and the same hereby are, affirmed with ten dollars ($10) costs and disbursements to the defendants.

Ent. C. H. V. B.

57 *Notice of Appeal to Court of Appeals.*

(Title of Proceeding.)

SIRS: Please take notice that the relator, The New York Clearing House Building Company, hereby appeals to the court of appeals from the order of the appellate division of the supreme court for the first department entered and filed in the office of the clerk of said court on the 15th day of June, 1898, affirming the order entered herein in the office of the clerk of the city and county of New York, on the 16th day of November, 1897, dismissing the writ of *certiorari* herein, and the judgment entered upon said order in the office of the clerk of the city and county of New York on the 23d day of November, 1897.

Dated New York, N. Y., July 13th, 1898.

Yours, etc.,

BRISTOW, OPDYKE & WILLCOX,
Attorneys for Relator, 20 Nassau Street,
Borough of Manhattan, New York City, N. Y.

To John Whalen, corporation counsel, No. 2 Tryon row, borough of Manhattan, New York city, N. Y.

William Sohmer, Esq., clerk of the county of New York, county court-house, borough of Manhattan, New York city, N. Y.

58 *Affidavit as to Opinion.*

(Title of Proceeding.)

COUNTY OF NEW YORK, *ss:*

David Willcox, being duly sworn, says:

I. He is one of the attorneys for the relator and appellant in the above-entitled proceeding.

II. No opinion accompanied the order of the appellate division of the supreme court for the first department, duly entered herein on the 15th day of June, 1898, affirming the order dismissing the writ of *certiorari* issued herein and the judgment entered thereupon.

DAVID WILLCOX.

Sworn to before me this 20th day of July, 1898.

J. V. SMITH,
Notary Public, Kings Co.

Certificate filed in N. Y. Co.

59 *Waiver of Certification.*

(Title of Proceeding.)

It is hereby stipulated that the foregoing printed papers contain true copies of the notice of appeal to the court of appeals, the order

of the appellate division of the supreme court for the first department appealed from, and of all the papers used by the aforesaid appellate division in the above-entitled proceeding, and certification thereof, pursuant to section 1315 of the Code of Civil Procedure, is hereby waived.

Dated New York, July 20, 1898.

BRISTOW, OPDYKE & WILLCOX,
Attorneys for Relator and Appellant,
20 Nassau Street, New York, N. Y.

JOHN WHALEN,
Corporation Counsel, Attorney for Respondents,
2 Tryon Row, New York, N. Y.

60 Court of Appeals of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Clearing House Building Company, Complainant and Appellant, *against* EDWARD P. BARKER, THEODORE SUTRO, and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York, Defendants and Appellees. } Taxes of 1896.

In this cause application having been made to the Honorable Alton B. Parker, chief justice of the court of appeals of the State of New York, that being the highest court of record in this State in which said cause can be heard, for the allowance of a writ of error to remove said cause to the Supreme Court of the United States for review in accordance with the Constitution and laws of the United States and of the rules and practice of the Supreme Court of the United States, and for the fixing and approving of the bond on the removal of said cause to the Supreme Court of the United States, it is hereby ordered that said writ of error be, and the same is hereby, allowed, and the same may be issued by any officer authorized to issue the same, and the penalty in the bond is hereby fixed at the sum of one thousand dollars, with the Lawyers' Surety Company of New York City as surety thereon.

April 7th, 1899.

ALTON B. PARKER,
Chief Justice of the Court of Appeals of the State of New York.

61 To the Honorable Alton B. Parker, chief justice of the court of appeals of the State of New York:

And now comes the People of the State of New York on the relation of The New York Clearing House Building Company, by Opdyke, Willcox & Bristow, its attorneys, and complains that in the record and proceedings and also in the rendition of a judgment of a plea in the suit between The People of the State of New York on the relation of The New York Clearing House Building Company,

relator, and Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, defendants, which is in the court of appeals of the State of New York, being the highest court of law and equity of the said State in which a decision could be had, the said court of appeals having rendered a decision affirming the said judgment theretofore rendered in the said supreme court on the 18th day of June, 1898, affirming the judgment of the special term of the said supreme court rendered on the 23rd day of November, 1897, against the relator and in favor of the defendants for the sum of fifty-seven dollars and fifty cents ($57.50) costs, and dismissing the writ of certiorari sued out by the relator, wherein was drawn in question the validity of a statute of said State and of an authority exercised thereunder, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of such their validity, all which appear in the records and proceedings in said suit, manifest error hath happened, to the great damage of the said The New York Clearing House Building Company.

62 Wherefore the said The New York Clearing House Building Company, by its attorneys aforesaid, prays for the allowance of a writ of error and such other process as may cause the said error to be corrected by the Supreme Court of the United States.

OPDYKE, WILLCOX & BRISTOW,
Attorneys for the New York Clearing House Building Company.

63 [Endorsed:] Court of appeals of New York. The People of the State of New York on the relation of The New York Clearing House Building Company, plaintiff and appellant, against Edward P. Barker and others, commissioners of taxes, &c., defendants and appellees. (Taxes of 1896.) (Original.) Petition for writ of error and order allowing same. Opdyke, Willcox & Bristow, attorneys for plaintiff & appellant, No. 20 Nassau street, New York, N. Y.

64 UNITED STATES OF AMERICA, *ss:*

Seal of the U. S. Circuit Court, Northern District N. Y.

The President of the United States of America to the honorable the judges of the court of appeals of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The People of the State of New York *ex rel.* The New York Clearing House Building Company, relator, and Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, defendants (taxes of 1896), wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question

the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the
65 construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said The New York Clearing House Building Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

W. S. DOOLITTLE,
Clerk of the United States Circuit Court,
North. District of New York,
By C. W. HIGGISON, *Deputy.*

Allowed by—
ALTON B. PARKER,
Chief Justice of the Court of Appeals
of the State of New York.

66 UNITED STATES OF AMERICA, *ss:*

To Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the New York court of appeals, in a suit wherein The People of the State of New York *ex rel.* The New York Clearing House Building Company are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff- in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Alton B. Parker, chief justice of the court

of appeals of New York, this 29th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

ALTON B. PARKER,
Chief Judge of the Court of Appeals of New York.

67 STATE OF NEW YORK, } ss.:
County of New York, }

On this 3rd day of May, in the year of our Lord one thousand eight hundred and ninety-nine, personally appeared John Monaghan before me, the subscriber, a notary public in and for the county of Kings, certificate filed in New York county, and makes oath that he delivered true copies of the within citation to James L. Wells, commissioner of taxes, &c., at 145 Broadway, Manhattan, N. Y. city; Theodore Sutro, commissioner of taxes, &c., at 280 Broadway, Manhattan, N. Y. city, and Edward P. Barker, commissioner of taxes, &c., at Hotel Bayard, 1703 Broadway, Manhattan, N. Y. city.

That said copies were all delivered to the aforesaid on the 2nd day of May, 1899.

JOHN MONAGHAN.

Sworn to and subscribed the 3rd day of May, A. D. 1899.

[Seal of J. V. Smith, Notary Public, Kings County.]

J. V. SMITH,
Notary Public, Kings County.

Cert. filed in New York county.

68 [Endorsed:] Court of appeals of New York. The People of the State of New York *ex rel.* The New York Clearing House Building Company, pl'ff in error, against Edward P. Barker and others, commissioners of taxes, &c., def'ts in error. (Taxes 1896.) Original. Citation and proof of service. Opdyke, Willcox & Bristow, attorneys for pl'ff in error, No. 20 Nassau street, New York, N. Y. Service this day of a copy of the within citation is hereby admitted. Dated N. Y., May —, 1899. A copy of the within paper has been this day received at the office of the corporation counsel. May 2, 1899. John Whalen, corporation counsel.

69 In the Court of Appeals of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Clearing House Building Company, Relator,
against
EDWARD P. BARKER, THEODORE SUTRO, and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York, Defendants. } Taxes of 1896.

The relator assigns the following errors in the final decision of this court, filed herein upon March 13, 1899:

I. The court erred in holding and deciding that the relator was not entitled to the remedy and relief prayed for in its petition and in affirming the order of the supreme court denying the prayer of said petition and dismissing the writ of certiorari theretofore issued pursuant to said petition.

II. The court erred in not ordering and adjudging that the order of the supreme court denying the prayer of the petition and dismissing the writ of certiorari be reversed, and that the prayer of said petition be granted and the assessment therein specified be stricken from the roll.

III. The court erred in denying to the relator the rights claimed by it in its said petition under the fourteenth amendment to the Constitution of the United States and in denying to the relator any relief on that ground.

IV. The court erred in not holding and adjudging that
70 the assessment set forth in the relator's petition was contrary to the provision of the fourteenth amendment to the Constitution of the United States securing to the relator the equal protection of the laws, and that the relator was entitled, upon that ground, to judgment striking said assessment from the roll.

V. The court erred in deciding in favor of the validity of the statutes of the State of New York and the authority exercised under said statutes pursuant to which the assessment specified in the relator's petition was imposed, notwithstanding that their validity was drawn in question on the ground of their being repugnant to the Constitution of the United States.

OPDYKE, WILLCOX & BRISTOW,
Attorneys for Relator.

71 [Endorsed:] N. Y. court of appeals. The People of the State of New York on the relation of The New York Clearing House Building Company, relator, against Edward P. Barker and others, commissioners of taxes, &c., defendants. (Taxes of 1896.) (Original.) Assignment of errors. Opdyke, Willcox & Bristow, attorneys for relator, No. 20 Nassau street, New York, N. Y.

72 Know all men by these presents that we, The New York Clearing House Building Company, as principal, and The Lawyers' Surety Company of New York City, as surety, are held and firmly bound unto Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, in the full and just sum of one thousand dollars, to be paid to the said Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, their certain attorney, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our successors or assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 30th day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a session of the court of appeals of New York, in a suit depending in said court between The People of the State of New York *ex rel.* The New York Clearing House Building Company, relator, and Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and assessments of the city and county of New York, defendants, a decision was rendered against the said relator and affirming the judgment of the supreme court of the State of New York, the writ of certiorari issued in said suit, and the said relator, The New York Clearing House Building Company, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decision in the aforesaid suit, and a citation directed to the said Edward P. Barker, Theodore Sutro, and James L. Wells, commissioners of taxes and
73 assessments of the city and county of New York, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said The New York Clearing House Building Company shall prosecute its said writ of error to effect and answer all damages and costs if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE NEW YORK CLEARING HOUSE BUILDING CO.,
By G. G. WILLIAMS. [SEAL.]
THE LAWYERS' SURETY COMPANY OF NEW YORK,
[SEAL.] By THOMAS HUNT, *2d Vice-President.*
Attest: JOEL RATHBONE, *Secretary.*

Sealed and delivered in presence of—
H. G. HINTON,
As to L. S. Co.

Approved by—
ALTON B. PARKER,
Chief Justice of the Court of Appeals of New York.

74 Form No. 209.

STATE OF NEW YORK, } ss:
County of New York, }

On the 30th day of March, in the year 1899, before me personally came Thomas Hunt, to me known, who, being by me duly sworn, did depose and say, that he resided in the city of New York; that he is the 2d vice-president of the Lawyers' Surety Company of New

York, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said company do not exceed its assets as ascertained in the manner provided in section 3, chapter 720, of the New York Session Laws of 1893.

[SEAL.] H. G. HINTON,
Notary Public, Kings County, N. Y.

Certificate filed in N. Y. Co.

At a stated meeting of the board of directors of the Lawyers' Surety Company of New York, held at the office of the company, Nos. 32, 34 and 36 Liberty street, in said city, on the 21st day of April, 1897, on motion, it was unanimously

"Resolved, That the president, the vice-president, the acting president or the second vice-president be, and either of them is, hereby authorized and empowered to sign, execute and deliver any and all bonds or undertakings for or on behalf of the company, and to attach thereto the seal of the corporation, the same to be attested by the secretary or the acting secretary."

COUNTY OF NEW YORK, *ss:*

I, Joel Rathbone, secretary of the Lawyers' Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 30th day of March, 1899.

[SEAL.] JOEL RATHBONE, *Secretary.*

75 [Endorsed:] N. Y. supreme court. The People of the State of New York *ex rel.* The New York Clearing House Building Company, plaintiff in error, against Edward P. Barker and others, commissioners of taxes and assessments, &c., defendants in error. (Taxes of 1896.) Bond.

76 STATE OF NEW YORK:

Court of Appeals, Clerk's Office.

I, W. H. Shankland, clerk of the court of appeals of the said State of New York, do hereby certify that the annexed papers constitute the original return and the whole thereof upon which the said court of appeals acted in rendering judgment herein, together with the remittitur of said court and the petition, order, writ of error, citation, copy of bond, and assignment of error to the United States Supreme Court herein.

Seal State of New York
Court of Appeals.

In witness whereof I have hereunto set my hand and affixed my official seal, at the city of Albany, this twenty-ninth day of April, A. D. 1899.

W. H. SHANKLAND,
Clerk Court of Appeals, State of New York.

Endorsed on cover: File No., 17,398. New York court of appeals. Term No., 288. The People of the State of New York *ex rel.* The New York Clearing House Building Company, plaintiff in error, vs. Edward P. Barker, Theodore Sutro, & James L. Wells, commissioners of taxes & assessments of the city and county of New York. Filed May 6th, 1899.